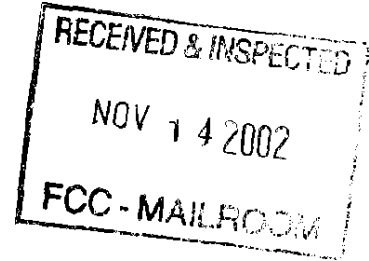


Before the
Federal Communications Commission
Washington, DC 20554



| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Request for Waiver by |) | |
| |) | |
| Tripp County Library |) | File No. SLD-326824 |
| Winner, South Dakota |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45✓ |
| Universal Service |) | |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. |) | |

ORDER

Adopted: November 7, 2002

Released: November 8, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Tripp County Library (Tripp), Winner, South Dakota, seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.¹ Specifically, Tripp requests a waiver of the application filing deadline for Funding Year 2002.² For the reasons set forth below, we deny Tripp's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools and libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form

¹ Letter from Sandra Hansen, Tripp County Library, to Federal Communications Commission, filed March 6, 2002 (Waiver Request).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c). Previously, Funding Year 2002 was referred to as Funding Year 5. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

³ 47 C.F.R. §§ 54.501–54.503

470.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must submit a completed FCC Form 471 application to the Administrator.' The Commission's rules require that the applicant file the FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 2002 was January 17, 2002 and all paper components of the FCC Form 471 had to be postmarked by that date.'

3. Tripp filed its application electronically on February 7, 2002 and mailed certifications and attachments the next day.* At the same time, Tripp requested a waiver of the filing window from SLD, which SLD denied.' Tripp then filed the pending Waiver Request. In support of its Waiver Request, Tripp asserts that one of its employees needed emergency surgery, and that a death also occurred, leaving Tripp with only one employee. Tripp also asserts that it is in a low-income remote rural area and that, if it does not receive help, it will impact on the entire community.

4. Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.'" A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.'" SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with our rules and procedures.* Timely submissions are needed because, under the funding mechanism, all requests for funding received within the initial filing deadline must be analyzed together in order to be considered pursuant to the funding priorities for in-window applicants.¹³

⁴ 47 C.F.R. § 54.504(b)

⁵ 47 C.F.R. § 54.504(c)

"47 C.F.R. §§ 54.504(c), 54.507(c).

⁷ SLD website, What's New (November 5, 2001),
<<http://www.sl.universalservice.org/whatsnew/112001.asp#110501c>>

⁸ FCC Form 471, Tripp County Library, filed February 8, 2002

⁹ Letter from Sandra Hansen, Tripp County Library, to Schools and Libraries Division, Universal Service Administrative Company, filed February 13, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sandra Hansen, Tripp County Library, dated February 14, 2002

¹⁰ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (appeals court vacating a Commission decision to grant a waiver in a licensing issue, because it **was arbitrary and capricious**).

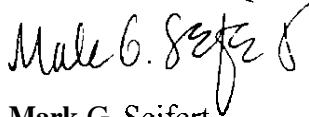
¹² See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

¹³ 47 C.F.R. §§ 54.504(c), 54.507(c)

5. We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application if the applicant wishes to be considered with other in-window applicants.¹⁴ We have repeatedly held that loss of employees due to illness or death does not relieve applicants of their responsibility to understand and comply with the rules and deadlines of the program." We also have held that the assertion of financial need of the applicant and the detrimental impact a denial of support will have on the students or patrons who make use of the services does not meet the requirement of special circumstances that warrant a waiver of the Commission's rules." Therefore, we conclude that Tripp has not demonstrated the existence of special circumstances warranting a deviation from our rules, and therefore, we must deny its Waiver Request.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Tripp County Library, Winner, South Dakota, on March 6, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁴ See Request for Review by Dermott Special School District, Hoven School District No. 53-2, Mask-Muriches-Shirley Community Library, Mounds Public Schools, Reading-Muhlenberg Area Vocational-Technical School, Versailles Exempted Village Schools, Westbrook School Department, Federal-State Joint Board on Universal Service, Change to the Board of Directors of the National Exchange Carrier Association, Inc., File Nos. SLD-252777, SLD-261808, SLD-277850, SLD-265880, SLD-257325, SLD-270374, SLD-220712, CC Docket Nos. 96-45 and 97-21, Order. DA 02-643 (Coin. Car. Bur. rel. March 19, 2002).

¹⁵ *Id.*, para. 4

¹⁶ See Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-183124, CC Docket Nos. 96-45 and 97-21, Order. 17 FCC Rcd 1756, para. 7 (Com. Car. Bur. 2002).

